

REMARKS

Reconsideration and reversal of the rejections expressed in the Office Action dated October 28, 2003 are respectfully requested in light of the following.

Claims 6-9 and 20-34 are solicited, wherein claims 6, 22, 28, and 32 are presented in independent form.

In the aforementioned Office Action, the Examiner rejected claims 6-9 and 20-31 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 2,663,048 to Ross, Jr., et al (hereinafter "Ross").

The Ross patent discloses caster units 25 and 26 coupled to a cabinet 10. The caster units 25 and 26 each comprises an upper plate 27 which is secured to the lower surface of the bottom 18 of the cabinet 10 as by screws 28. A lower plate member 30 is hingedly connected to one side of the upper plate member 27, as at 31. The lower plate member 30 extends downwardly at an angle from the hinge point 31 and is provided with a flat portion 32 which is disposed in substantially parallel relation to the upper plate 27 when the caster unit is in the lowered or operative position (Fig. 2). A cam shaft 47 is held against longitudinal sliding movement in a bearing 44 and is provided with a pair of spaced cams 60 and 61. The location of the cam shaft 47 causes the greater portion of the cams 60 and 61 to be turned downwardly to engage the flat portion 32 of the plate 30 and to move the free edges of the plates 27 and 30 apart from each other. The caster rollers 40 and 41 then also move away from the upper plate 27 into an engagement with the floor F and lift the legs 20-23, inclusive, from an engagement with the floor F so that the cabinet 10 is supported by the caster rollers 40 and 41.

The Ross patent simply does not support the Examiner's rejections of claims 6-9 and 20-31 under 35 U.S.C. § 102(b). It is well known that "anticipation under 35 U.S.C. § 102 requires the disclosure in a single piece of prior art of each and every limitation of a claimed invention." Apple Computer, Inc. v. Articulate Systems, Inc., 57 USPQ2d 1057, 1061 (Fed. Cir. 2000), citing Electro Med. Sys. S.A. v. Cooper Life Sciences, 32 USPQ2d 1017, 1019 (Fed. Cir. 1994). Further, the Federal Circuit has held that "[t]o anticipate, the reference must ... enable one of skill in the art to make and use the claimed invention." Transclean Corp. v. Bridgewood Services, Inc., 62 USPQ2d 1865, 1869 (Fed. Cir. 2002); Bristol-Meyers Squibb Co. v. Ben Venue Laboratories, Inc., 58 USPQ2d 1508, 1512 (Fed. Cir. 2001).

The Ross patent does not disclose all of the elements recited in independent claim 6. More particularly, claim 6 clearly recites "support bars which are rigidly attached to the support shafts and pivotally coupled to frame members of a bed frame." There is no disclosure, much less any teaching or suggestion, in Ross of providing a bed frame, nor support bars which are pivotally coupled to frame members of a bed frame. For this reason alone, the Examiner has failed to establish a *prima facie* case of anticipation under 35 U.S.C. § 102(b).

Further, the Ross patent does not disclose, teach or suggest locking bars which are movable between "a first position in which portions of the locking bars engage the support bars and lock the support shafts in a vertical position," and "a second position in which the locking bars are clear of the support bars so that the support shafts are free to pivot about the frame members." In the Office Action, the Examiner states that he "considers feature 47 of Ross to be the locking bar." While the Examiner acknowledges that the "locking bar itself, is always clear of the support bar", he then further states that "portions of the locking bar (66, 67) engage the support bars in a first position and are clear of the support bars in a second position." The Examiner is apparently using inconsistent characterizations of what he considers to be the locking bar in an attempt to meet the limitations of claim 6.

Applicant respectfully submits that regardless of whether the stops 66 and 67 of the cams 60 and 61 are considered to be part of a "locking bar", the device disclosed in Ross does not anticipate the invention recited in claim 6. More particularly, the cams 60 and 61 are always contacting the flat portion 32 of plate member 30. As such, there is simply no position in which locking bars are clear of the support bars. Further, there is simply no position of locking bars in which the support shafts are free to pivot about the frame member. The cams 60 and 61 are always restricting movement of the support shaft.

It is further noted that the Ross patent was expressly considered by the previous Examiner and claims 6-9 and 20-31 were deemed allowable thereover. Moreover, the previous Examiner found that "[n]either Ross, Kendall, nor the other prior art references of record disclose a caster assembly where locking bars are clear of and do not engage support bars in the second position." (Office Action dated Nov. 29, 2002, p. 3, lns. 7-8). The current Examiner is now taking a viewpoint opposite of the previous Examiner and rejecting the claims over the same patent. As provided under Section 706.04 of the Manual of Patent Examining Procedure (MPEP), "[f]ull faith and credit should be given to the search and action of a previous examiner unless there is clear error in the previous action or knowledge

of *other* prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something." (emphasis added) Unfortunately, it appears that in the present application the Examiner is attempting to reorient the point of view of a previous examiner by re-evaluating prior art already expressly considered. Section 706.04 of the MPEP further warns that great care should be exercised in rejecting a claim previously noted as allowable. See Ex parte Grier, 1923 C.D. 27, 309 O.G. 223 (Comm'r Pat. 1923); Ex parte Hay, 1909 C.D. 18, 139 O.G. 197 (Comm'r Pat. 1909).

For at least the foregoing reasons, it is respectfully submitted that claim 6, and dependent claims 7-9, 20, and 21 are in condition for allowance.

Independent claim 22 recites "a locking bar configured to move between a first position in which a portion of the locking bar engages the support bar and locks the support shaft in a locked position, and a second position in which the locking bar is clear of the support bar so that the support shaft is free to pivot in at least a first direction about the frame member." For the reasons provided above with respect to claim 6, claim 22 and the claims dependent therefrom are believed to be in condition for allowance. Such action is respectfully requested.

Independent claim 28 recites "a locking bar configured to move between a first position in which the locking bar engages the support bar and the support shaft is prevented from pivoting movement in at least a first direction, and a second position in which the locking bar does not engage the support bar and the support shaft is capable of pivoting movement in at least the first direction." Again, claim 28 and the claims dependent therefrom are believed to be in condition for allowance for the reasons provided above with respect to claim 6. Such action is respectfully requested.

Claims 32-34 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross. It is respectfully submitted that the Ross patent fails to provide any teaching or suggestion of providing the elements recited in amended claim 32. More particularly, Ross fails to provide any teaching or suggestion of a caster assembly for a bed including a support deck, a base frame, and an intermediate frame coupled to the base frame and configured to move vertically relative to the base frame. Further, Ross fails to provide any hint or suggestion of the caster assembly including a support shaft "coupled to the intermediate frame for pivotal movement relative to the ground surface between a lowered position and a raised position, wherein the support deck is supported by the intermediate frame when the

support shaft is in the lowered position and the support deck is supported by the base frame when the support shaft is in the raised position.”

It is noted that the Examiner has apparently mischaracterized the caster unit 25 as an intermediate frame, and the flats 50 of the cam shaft 47 as a coupling between an alleged base frame and an alleged intermediate frame. Nevertheless, Ross further fails to provide any hint or suggestion of “a locking member operably associated with the support shaft and configured to move between a first position in which the locking member is operably coupled to the support shaft to prevent the support shaft from pivotally moving in at least a first direction from the lowered position to the raised position, and a second position in which the locking member is not operably coupled to the support shaft to allow the support shaft to pivotally move in at least the first direction from the lowered position to the raised position as an intermediate frame is lowered until the base frame engages the ground surface.” As detailed above with respect to independent claim 6, the locking member simply does not have a second position in which the locking member is not operably coupled to the support shaft to allow the support shaft to pivotally move in at least the first direction from a lowered position to the raised position.

Further, the Ross patent fails to provide any hint or suggestion of a structure permitting pivotal movement of the support shaft in the first direction from the lowered position to the raised position as the intermediate frame is lowered until the base frame engages the ground surface. Even if the caster device 25 was considered to include an intermediate frame, the lowering of such an intermediate frame does not result in the base frame engaging the ground surface much less the support shaft pivotally moving in at least the first direction from the lowered position to the raised position. In fact, the lowering of any alleged intermediate frame of caster device 25 in Ross would result in the opposite movement of the base frame and support shaft.

For at least the above reasons, it is respectfully submitted that claim 32, and the claims dependent therefrom, are in condition for allowance.

Claims 8, 24, and 29 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross in view of U.S. Patent No. 4,417,738 to Kendall (hereinafter “Kendall”).

The Kendall patent discloses a caster assembly as used in the framework of a pallet 10. The caster assembly comprises a pressure plate 44 to which a caster 34 is pivotally secured, and a hinge plate 48 which is secured to the framework by a pivotable mounting,

such as a bolt and nut 32. The lower surface of the hinge plate 48 is secured to the pressure plate 44 in a fixed fashion. The caster 34 is pivotally mounted on a lower surface of the pressure plate 44. By raising a handle portion 38 of a lever means from the surface of the pallet to a position slightly past the vertical line (A) extending through a fulcrum point 40, the lever means pivots about point 40 and an engagement point 42 presses against the pressure plate 44 and acts to lower the wheel 34 as the hinge plate 48 pivots about its mounting 32. By operation of the lever means, the caster 34 is lowered below the lower surface 36 of the pallet 10 thus raising the pallet 10 off the surface.

It is respectfully submitted that the Kendall patent fails to overcome the deficiencies of the primary Ross patent. For this reason alone, it is respectfully submitted that claims 8, 24, and 29 are properly allowable.

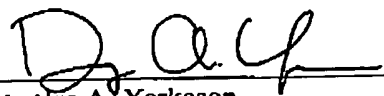
It is further noted that following a telephonic interview with the previous Examiner on July 24, 2003, an agreement was reached wherein claim 32 as currently presented was found to be in condition for allowance over both the Ross and Kendall patents. Again, the current Examiner is now apparently taking a new approach in an attempt to re-orient the point of view of the previous Examiner. Again, it is urged that full faith and credit should be given to the search and action of the previous Examiner wherein claim 32 as currently presented was found to be properly allowable.

In view of the foregoing, it is respectfully submitted that all of the solicited claims are in proper condition for allowance. Such action is respectfully requested.

If necessary, applicant requests that this response be considered a request for an extension of time appropriate for the response to be timely filed. Applicant requests that any required fees needed beyond those submitted with this response be charged to the deposit account of Bose McKinney & Evans, Deposit Account No. 02-3223.

The Examiner is invited to contact the undersigned at the telephone number provided below should any questions or comments arise during the course of reconsideration of this matter.

Respectfully submitted


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